

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

_____)	
IN RE DIET DRUGS)	
(PHENTERMINE/FENFLURAMINE/)	MDL No. 1203
DEXFENFLURAMINE) PRODUCTS)	
LIABILITY LITIGATION)	
)	
_____)	
THIS DOCUMENT RELATES TO:)	
GWENDOLYN HART <i>et al.</i> ,)	
)	
Plaintiffs,)	Civ. No. 02-20141
)	
v.)	
)	
WYETH <i>et al.</i> ,)	
)	
Defendants.)	
)	
_____)	

PRETRIAL ORDER NO.

AND NOW, upon consideration of Wyeth's Motion to Dismiss the Claims of Plaintiff Originally Named in the *Hart* Complaint Who Did Not Timely File a Severed and Amended Complaint, it is hereby ORDERED that said motion is GRANTED. Accordingly, all Claims of Plaintiff Pamela Hitchen are hereby dismissed with prejudice, with each party to bear its own costs.

Harvey Bartle III, J.

Dated:

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)	
Defendants.)	
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_____)	

**WYETH'S MOTION TO DISMISS THE CLAIMS OF PLAINTIFF
ORIGINALLY NAMED IN THE *HART* COMPLAINT WHO DID NOT
TIMELY FILE A SEVERED AND AMENDED COMPLAINT**

Wyeth hereby moves, pursuant to Paragraph 13 of PTO 3370, to dismiss the claims of plaintiff Pamela Hitchen for failure timely to file a Severed and Amended Complaint. Wyeth has also submitted herewith a proposed form of order.

Respectfully submitted,

/s/ Richard Kornylak

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Attorneys for Defendant Wyeth

Dated: January 12, 2005

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Plaintiffs,)	Civ. No. 02-20141
)	
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WYETH <i>et al.</i> ,)	
)	
Defendants.)	
)	
_____)	

**WYETH'S MEMORANDUM IN SUPPORT OF ITS MOTION
TO DISMISS THE CLAIMS OF PLAINTIFF ORIGINALLY NAMED
IN THE *HART* COMPLAINT WHO DID NOT TIMELY FILE
A SEVERED AND AMENDED COMPLAINT**

FACTS

In PTO 3370, the Court established a procedure severing plaintiffs named in multiple-plaintiff actions and requiring each of those plaintiffs to refile an individual Severed and Amended Complaint. PTO 3370 ¶¶ 5-14.

The case captioned *Gwendolyn Hart et al. v. Wyeth et al.*, Civ. No. 02-20141, was severed by PTO 4092, entered on November 2, 2004. Pursuant to the terms of PTO 3370, plaintiffs must refile a Severed and Amended Complaint, if at all, within 60 days of the filing of the severance order. PTO 3370 ¶ 7. Severed and Amended

Complaints originating from the *Hart* case were therefore required to be filed no later than December 31, 2004.

The plaintiff Pamela Hitchen, originally named in the *Hart* complaint, did not file a Severed and Amended Complaint by the deadline for doing so under PTO 3370.

ARGUMENT

By this motion, Wyeth asks the Court for an order dismissing with prejudice this plaintiff's claims for failure to prosecute her action. Paragraph 13 of PTO 3370 provides:

A plaintiff's failure to file a Severed and Amended Complaint within the time prescribed in Paragraph 7 [*i.e.*, 60 days from the filing of the order severing the case], without further leave of Court, will be deemed a failure to prosecute and to comply with this Order and, upon motion by any defendant, may result in the dismissal of the plaintiff's Claims with prejudice, pursuant to Federal Rule of Civil Procedure 41(b).

Pamela Hitchen has neither filed a Severed and Amended Complaint nor moved the Court for an extension of time to file such complaint. It appears as though this plaintiff no longer wishes to pursue her action. In any event, under the terms of PTO 3370, her Claims should be dismissed with prejudice.

Respectfully submitted,

/s/ Richard Kornylak

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Attorneys for Defendant Wyeth

Dated: January 12, 2005

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Wyeth's Motion to Dismiss the Claims of Plaintiff Originally Named in the *Hart* Complaint Who Did Not Timely File a Severed and Amended Complaint, Memorandum in Support of Wyeth's Motion, and proposed Pretrial Order were served this 12th day of January, 2005 by first-class mail, postage prepaid, upon counsel appearing on the attached Service List.

Wyeth's Motion, Memorandum, and proposed Order have been filed electronically and are available for viewing and downloading from the ECF system.

/s/ Richard Kornylak

Richard Kornylak

Dated: January 12, 2005

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